

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

CITY OF HATTIESBURG

PLAINTIFF

V.

NO. 2:13-cv-208-KS-MTP

HERCULES, INC., ET AL.

DEFENDANTS

**HERCULES' URGENT AND NECESSITOUS MOTION FOR EXTENSION OF TIME
TO RESPOND TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Hercules Incorporated ("Hercules") files its Urgent and Necessitous Motion for Extension of Time to Respond to Plaintiff's Motion for Partial Summary Judgment and in support thereof shows the following:

1. The City filed a motion for partial for summary judgment on October 9, 2015. [Doc. 159]

2. Relying on a complex, new theory, the City's motion claims that wastewater from the production of toxaphene generated at the Hercules facility during a 13-month stint in the early 1950s (more than 60 years ago) constitutes a *per se* Resource Conservation and Recovery Act ("RCRA") violation today.

3. This new theory was first disclosed to Hercules on September 1, 2015. Hercules has not had adequate time to do an investigation, conduct discovery, depose Plaintiff's experts, or obtain its own expert analysis on this issue.

4. Consequently, Hercules filed a Rule 56(d) response to Plaintiff's motion, asking the Court to either (1) deny Plaintiff's motion, or (2) give Hercules until 14 days after the close of discovery (March 15, 2016) to respond to Plaintiff's motion. [Doc. 161]

5. If the Court grants Hercules' Rule 56(d) request, this Motion will be moot. However, it is necessary for Hercules to file this Motion now to seek alternative forms of relief.

See 11-56 MOORE'S FED. PRAC. - CIVIL § 56.101(4) ("But the fact that a Rule 56(d) motion is pending does not, by itself, defer the due date for the response. . . . If a party files a Rule 56(d) motion in advance but does not later file a timely response to the summary judgment motion itself, and the court then denies the Rule 56(d) motion, the party may find itself subject to the 'considered undisputed' provisions of Rule 56(e).").

6. In the event the Court denies Hercules' previously filed Rule 56(d) response, Hercules requests that it be given additional time to substantively respond to Plaintiff's motion for partial summary judgment.

7. The law is clear that a court has inherent authority to grant extensions of time even if the requested extension is denied on Rule 56(d) grounds. *See Kennedy v. Jefferson Cnty., Miss.*, 2015 WL 778413, at *2 (S.D. Miss. Feb. 24, 2015) (denying relief under Rule 56(d), but granting alternative request to be given two weeks after the close of discovery to respond to the motion for summary judgment).

8. Accordingly, Hercules respectfully requests that it be given until 14 days after the close of discovery to respond to Plaintiff's motion for partial summary judgment. But at a minimum, Hercules should be given 14 days after the Court rules on its outstanding Rule 56(d) request.

9. The undersigned counsel has attempted to confer with counsel for Plaintiff as to whether Plaintiff will oppose this motion but has received no response as of the time of this filing.

10. Given the straightforward nature of this Motion, Hercules requests that it be relieved of the requirement of filing a separate memorandum brief.

Hercules respectfully requests, that if its Rule 56(d) request is denied, that the Court grant Hercules an extension until and including March 15, 2016 (14 days after the discovery deadline)

to respond to Plaintiff's motion for partial summary judgment or such other extension that the Court deems proper.

This the 19th day of October, 2015.

Respectfully submitted,

HERCULES INCORPORATED

By Its Attorneys,
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

By: /s/Ashley C. Tullos
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the ECF system, which served a copy upon registered participants.

This the 19th day of October, 2015.

/s/Ashley C. Tullos
ASHLEY C. TULLOS